

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

V.

Criminal No. 4:13-cr-0045-GHD-JMV-1

Civil No. 4:16-cv-00143-GHD

JOHN BUIE

ORDER DENYING DEFENDANT JOHN BUIE'S MOTION TO VACATE, SET ASIDE, OR
CORRECT SENTENCE

The Court has before it Defendant John Buie's motion to correct sentence under 28. U.S.C. § 2255. [Doc. No. 31]. Having considered the matter, the Court finds the motion should be denied.

On February 18, 2014, this Court sentenced Buie to a term of 30 months' imprisonment for carjacking, in violation of 18 U.S.C. § 2119. The Court further sentenced Buie to a term of 84 months' imprisonment, to run consecutive to the bank robbery sentence, for brandishing a firearm during a violent crime – the carjacking– in violation 18 U.S.C. § 924(c). 18 U.S.C. § 924(c) imposes enhanced penalties for anyone who, “during and in relation to any crime of violence,” uses or carries a firearm. It defines a “crime of violence” as:

an offense that is a felony and--

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Id. § 924(c)(3).

In *Johnson v. United States*, ___ U.S. ___, 135 S. Ct. 2551, 192 L.Ed.2d (2015), the United States Supreme Court held that the residual clause of 18 U.S.C. § 924(e), which defined “violent felony” to include an offense that “involves conduct that presents a serious potential risk of

physical injury to another,” 18 U.S.C. § 924(e)(2)(B)(ii)(2012), was unconstitutionally vague. *Johnson*, 135 S. Ct. at 2563. Buie argues that in light of the Supreme Court’s holding, the similar language of § 924(c)(3)(B) is void for vagueness for the same reasons as § 924(e)(2)(B)(ii). Therefore, to be sentenced under § 924(c), carjacking must meet the definition of a crime of violence under the elements clause, § 924(c)(3)(A). He argues it does not, and his sentence should be vacated and he must be resentenced without the application of § 924(c).

In *United States v. Jones*, the Fifth Circuit confronted identical arguments – that the Supreme Court’s holding in *Johnson* rendered § 924(c)(3)(B) and that carjacking is not a “crime of violence” – and held:


Jones’s argument that § 924(c)(3)(B) is unconstitutionally vague under *Johnson* is foreclosed by our *en banc* decision in *United States v. Gonzalez-Longoria*, 831 F.3d 670 (5th Cir. 2016). In *Gonzalez-Longoria*, we held that the definition of “crime of violence” found in 18 U.S.C. § 16(b) remains constitutional in the aftermath of *Johnson*. *Gonzalez-Longoria*, 831 F.3d at 675–77. The definition of “crime of violence” found in § 16(b) is identical to the definition found in § 924(c)(3)(B); therefore, the definition of “crime of violence” under § 924(c)(3)(B) is not unconstitutionally vague. *See United States v. Chapman*, 851 F.3d 363, 374–75 (5th Cir. 2017).

Further, contrary to Jones’s assertion, carjacking fits under the definition set forth in § 924(c)(3)(A)—it “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” Section 2119 provides that a person commits an offense when, “with the intent to cause death or serious bodily harm,” he takes a motor vehicle “by force and violence or by intimidation.” 18 U.S.C. § 2119. . . . Our own precedent, although in the bank robbery context, leads us to conclude that a crime that has as an element a taking “by force and violence or by intimidation” is a “crime of violence” under § 924(c)(3)(A).

United States v. Jones, 854 F.3d 737, 740 (5th Cir.), *cert. denied*, 138 S. Ct. 242, 199 L. Ed. 2d 155 (2017). Accordingly, the Court finds that Buie’s carjacking conviction was appropriately classified as a “crime of violence”, and therefore his sentence under § 924(c) was correct. The

Court **ORDERS** that Buie's 's motion to correct his sentence [Doc. No. 31] is **DENIED** and civil case no. 4:26-cv-143 is **CLOSED**.

SO ORDERED, this, the 29th day of January, 2018.



SENIOR U.S. DISTRICT JUDGE